

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

UNITED STATES OF AMERICA, PLAINTIFF,
VERSUS CIVIL ACTION NO. 1:93CV330-S-D
JOHNNY RUDOLPH CHENAULT, DEFENDANT.

MEMORANDUM OPINION GRANTING
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

This cause is before the court on the motion of the plaintiff
for summary judgment.

Facts

The defendant was convicted on July 2, 1987, in the United States District Court, Northern District of Mississippi, of transmitting false, forged, altered and counterfeited writings to an office of the United States, in violation of Title 18 U.S.C. § 2 and § 495 (criminal case number CRE87-23-S). On August 27, 1987, he was sentenced to a three year term of imprisonment and five years supervised probation. The defendant was ordered to pay \$159,782.00 in restitution to the Defense Logistics Agency. The defendant was released from incarceration on October 3, 1988, and began his five year term of supervision. When the defendant's supervised release was completed there remained unpaid \$156,488.00 in restitution. The defendant has not paid any restitution since completion of the supervised release.

Summary Judgment Standard

The summary judgment standard is familiar and well settled. Summary judgment is appropriate only if the record reveals that there is no genuine issue of any material fact, and the moving party is entitled to judgment as a matter of law. F.R.C.P. 56(c). The pleadings, depositions, admissions, answers to interrogatories, together with any affidavits, must demonstrate that no genuine issue of material fact exists. Celotex Corp. v. Catrett, 477 U.S. 317 (1986). "Where the record, taken as a whole, could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986); Federal Sav. and Loan Ins. V. Kralj, 968 F.2d 500, 503 (5th Cir. 1992). The facts are reviewed drawing all reasonable inferences in favor of the nonmoving party. Reid v. State Farm Mut. Auto Ins. Co., 784 F.2d 577, 578 (5th Cir. 1986). However, summary judgment is mandated after adequate discovery and upon proper motion against a party who fails to make a sufficient showing to establish the existence of an essential element to that party's case, and on which that party will bear the burden of proof at trial. Celotex, 477 U.S. at 322.

Discussion

The plaintiff is seeking a judgment in the amount of \$156,488.00, for the fraudulent acts of the defendant associated with his conviction. Title 18 U.S.C. § 3663(e)(2) provides:

Any amount paid to a victim under an order of restitution shall be set off against any amount later recovered as compensatory damages by such victim in--

(A) any Federal Civil proceeding; and ...

"Accordingly, '[i]f the restitutionary order fails to satisfy the victim, he can seek a civil judgment when the court's jurisdiction ends or even when the restitutionary order is in effect.'" United States v. Shaw, 725 F.Supp. 896, 899 (S.D.Miss. 1989) (quoting Unites States v. Bruchey, 810 F.2d 456, 461 (4th Cir. 1987)). While the statute provides for a set-off, it does not bar a victim of a crime from obtaining a civil judgment for the amounts yet unpaid. The defendant admits to having been convicted of violations of 18 U.S.C. § 2 and § 495 and admits that he owes \$156,488.00 in restitution.

Once a court has decided an issue essential to its judgment, collateral estoppel precludes a party against whom the issue was decided from relitigating it. Metro Charities Inc. V. Moore, 748 F.Supp. 1156, 1160 (S.D.Miss. 1990); see Ingalls Shipbuilding Div., Litton Systems, Inc. v. Parson, 495 So.2d 461, 463 (Miss. 1986). The doctrine has the effect of conclusively establishing a question of law or fact that has received a final judgment for the purposes of a later lawsuit. Garraway v. Retail Credit Co., 244 Miss. 376, 141 So.2d 727 (Miss. 1962). In addition to promoting judicial economy and protecting litigants from the burden of relitigation, collateral estoppel serves to prevent inconsistent judgments which can undermine the finality and integrity of the judicial system. See State Farm Mutual Automobile Insurance Company v. Universal Underwriters Insurance Co., 601 F.Supp. 286, 288 (S.D.Miss. 1984). "The unsuccessful party is precluded from relitigating the fact so

found." Jordan v. McKenna, 573 So.2d 1371, 1375 (Miss. 1990). The general rule remains, however, that fact questions should be completely litigated in each case; the doctrine of collateral estoppel is merely an unusual exception to the general rule. Id. 601 F.Supp. at 288. "Where there is room for suspicion regarding the reliability of those first fact findings, collateral estoppel should never be applied." Mississippi Employment Secur. Com. v. Philadelphia Municipal Separate School District, 437 So.2d 388, 397 (Miss. 1983).

A factual or legal issue which has been adjudicated in a prior criminal trial can be used to collaterally estop relitigating that issue in a civil action. See Jordan, 573 So.2d at 1377 ("[T]here is no reason on principle why collateral estoppel's preclusive effect should not apply in civil actions where the finding offered in the civil action is one made beyond a reasonable doubt in the criminal action and collateral estoppel's requisites are otherwise met."); U.S.F. & G. Co. v. Moore, 306 F.Supp. 1088, 1095 (N.D.Miss. 1969) ("...a conviction in a prior criminal case is conclusive, in a subsequent civil action, of the facts on which the conviction was based."); United States v. Thomas, 709 F.2d 968, 972 (5th Cir. 1983) ("Because of the existence of a higher standard of proof and greater procedural protection in a criminal prosecution, a conviction is conclusive as to an issue arising against the criminal defendant in a subsequent civil action."). Quite clearly an order of restitution has collateral effect in a subsequent civil

action.

(e) A conviction of a defendant for an offense involving the act giving rise to restitution under this section shall estop the defendant from denying the essential allegations of that offense in any subsequent Federal civil proceeding or State civil proceeding, to the extent consistent with State law, brought by the victim.

18 U.S.C. § 3664(e).

The court's use of the verdicts is governed by 28 U.S.C. § 1738.

...judicial proceedings of any court of any such State... shall have the same full faith and credit in every court within the United States...as they have by law or usage in the courts of such State...from which they are taken....

A federal court sitting in a diversity case is Erie bound to apply the substantive law of the forum state. A federal court applies the rules of preclusion of the state court from where the judgment comes. A prior state court judgment cannot be given a greater collateral estoppel effect than the state court would give it. Reimer v. Smith, 663 F.2d 1316, 1326 (5th Cir. 1981).

Mississippi's rule of preclusion controls the question whether collateral estoppel is applicable here. The Mississippi Supreme Court has held that the doctrine of "[c]ollateral estoppel applies where three elements are present:

(1) The issue involved in the second suit was identical to the one involved in the previous suit; (2) the issue was actually litigated in the prior action; and, (3) the resolution of the issue was necessary to the prior judgment."

Evans v. Sharples, 607 So.2d 1210, 1213 (Miss. 1992). The Mississippi Supreme Court followed the announcement of the three

part test with this sentence:

An additional requirement applicable to this case is that the party against whom the doctrine is applied must have had a full and fair opportunity to litigate the issue in the previous action and must have been able to foresee the future litigation. Jordan v. McKenna, 573 So.2d 1371, 1375 (Miss. 1990).

Evans, 607 So.2d at 1213. This "additional requirement" arguably may be applicable only to that case. The defendant is collaterally estopped from his civil liability for his fraudulent acts upon which he was convicted. Judgment in this civil action should be the amount of restitution minus his payments. See Shaw, 725 F.Supp. at 899; 18 U.S.C. § 3663(e)(2).

The defendant's claim that the amount of judgment should be off-set by the value of certain wooden pallets seized by the government upon his arrest is without merit. The off-set of the allegedly seized items should have been taken into consideration when the restitution was set. No appeal was taken as to the amount of restitution that was ordered to be paid. "Any dispute as to the proper amount or type of restitution shall be resolved by the court by the preponderance of the evidence." 18 U.S.C. § 3664(d). Only the amount of the defendant's payments can set-off the collateral effect of the order of restitution. See 18 U.S.C. § 3663(e)(2). The defendant is collaterally estopped from arguing that the amount of judgment is different from the amount set by the order of restitution.

The defendant alleges that any debt from this civil proceeding was discharged in his bankruptcy petition which listed the amount

of restitution as a dischargeable debt. The defendant filed bankruptcy on May 23, 1989, in the Western District of Tennessee, case no. 89-23790-B. Any civil judgment from this cause of action has yet to be entered. Restitution and any civil debt based upon the fraudulent acts for which the defendant was convicted would be non-dischargeable in bankruptcy. See 11 U.S.C. § 1328(a)(3) and § 523(a)(7); Kelly v. Robinson, 479 U.S. 36 (1986) (any condition a state criminal court imposes as part of a criminal sentence is preserved from discharge); 11 U.S.C. § 523(4) (debt from fraud is non-dischargeable). If somehow this civil judgment was properly listed on the bankruptcy petition with appropriate notice having been given to the plaintiff, the proceeding sub judice still would be unaffected. This court is only entering a judgment for \$156,488.00. If the judgment is not collectable because it has been discharged in bankruptcy, then it will be necessary for the defendant to seek protection in the bankruptcy court, and for that court to determine whether the judgment rendered in this civil action can be levied against the defendant.

An ORDER in accordance with this Memorandum Opinion shall be issued. This _____ day of October, 1994.

CHIEF JUDGE